

APR 13 1973

Executive Privilege—Devious Doctrine

By Clark R. Mollenhoff

WASHINGTON — The Fitzgerald case demonstrates the extreme evil that executive privilege can be in hiding relevant facts from the public in an Air Force conspiracy to destroy a truthful witness.

An Air Force cost analyst, A. Ernest Fitzgerald was discharged after he displeased his superior by testifying on the billion-dollar cost overruns on the C-5A program. Editorial pages were nearly unanimous in castigating the abolition of Fitzgerald's \$30,000-a-year job, and declared the economy reasons given were but a subterfuge for malicious retaliation.

The Air Force denied it, and imposed a secrecy on its records, proceedings and conversations with the White House. The "privilege" buried evidence of a devious smear of Fitzgerald as well as other evidence that the Air Force plotted to harass and intimidate a truthful witness.

Disregarding Air Force efforts to impose executive privilege, White House memoranda were made available to Fitzgerald to establish key aspects of his case. Without those internal memoranda of advice, Fitzgerald's case would have been incomplete and the Air Force would have successfully hidden its deceptions.

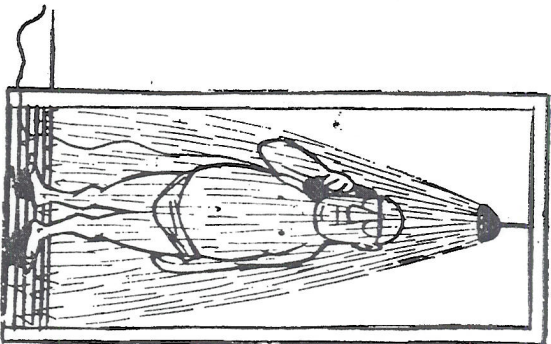
Recent history shows that this devious doctrine has rarely been used for anything but a cover-up for scandalous military bungling, foreign aid corruption, conflicts of interest and influence peddling. Examples in-

clude the Dixon-Yates "conflict of interest," the Adams-Goldfine affair, frauds in Laos foreign aid, the Billy Sol Estes cotton allotment frauds, the TFX warplane mismanagement and "conflicts of interest," and the White House investigation of the Watergate scandal.

Arrogant executive branch officials have even used it to bar General Accounting Office auditors from financial records in violation of the Budgeting and Accounting Act of 1921 that specifically requires that "all records" be made available to the office upon request.

Various Attorneys General, politically appointed, have ruled that executive privilege gave the executive branch the right to impose this arbitrary secrecy. It was the king's lawyer stating the king was right in asserting this total power to withhold evidence from Congress and the General Accounting Office.

It has been conceded that no law of Congress has granted this so-called executive privilege and no Supreme Court decision has been cited for this assertion that the President has a constitutional right to bar testimony from any high-level or low-level official of any executive agency when he believes it to be in the national interest. Further, we are told that the executive privilege claims cover any internal working paper in the executive branch and that any advisory opinion can be withheld from Congress, the General Accounting Office or the public without explanation except that the President believes it to be in the national interest.



Chavel/Dioegenes

The only authority cited for this seed of totalitarianism is a claim of some all-encompassing "inherent right" under "the separation of powers" doctrine of the Constitution.

Senator Sam Ervin, a recognized authority on the Constitution, has declared that "executive privilege is executive poppycock." He has castigated President Nixon's effort to bar all present and former White House aides from appearing on the Watergate investigation as an attempt to rob Congress of a rightful power to investigate to determine if the laws passed by Congress are being properly administered and enforced.

Raoul Berger, a senior fellow at

Harvard Law School who has done extensive research on the history of the so-called precedents, has declared that executive privilege is a myth and not the "time-honored doctrine" that William P. Rogers claimed it to be when he became its leading proponent as Attorney General in the Eisenhower Administration.

Seldom has it been used as anything but a blatant cover-up for corruption, mismanagement and political double-dealing. The doctrine is devoid of decency because it creates the illusion that officials may use the great power of the White House in secret and never be held accountable for their acts.

The Watergate scandal is simply the latest manifestation of the corrupting influence of the ill-founded illusion of total power to corrupt the political processes and get by with it. The Watergate scandal and the Fitzgerald case provide sufficient examples for the public and the Congress to comprehend the mischief that can be created behind a facade of pious slogans about "a sacred separation of powers."

Where secrecy is needed to cover sensitive negotiations or raw F.B.I. files, an articulate President need only appeal to the common sense and decency of the electorate on the specific issue involved, and not engage in public relations gimmickry to give further support to a doctrine that could destroy all of our freedoms.

Clark R. Mollenhoff is Washington bureau chief of The Des Moines Register and Tribune and a former aide to President Nixon.